9. The Cochin Tenancy Act(Amendment) Bill

Mr. M. Sivarama Menon (*Advocate-General*): Sir, I move that the Cochin Tenancy Act (Amendment) Bill be read in Council.

Mr. B. V. K. Menon *(Secretary to Government)*: I second it.

Mr. M. Sivarama Menon *(Advocate-General)*: Sir, this House is very well aware of the history of this Amending Bill, but in order to refresh the memory of the Hon'ble Members I wish to bring to your notice that a committee to revise the provisions of the Cochin Tenancy Act was constituted by the Government in the month of May 1943 at a time when the House was already in possession of a Bill of Hon'ble Member Mr. T. P. Poulose who was a member of this Council then regarding certain amendments regarding the payment of renewal fee. It was then considered that a review of the provisions of the whole Tenancy Law was necessary and that piecemeal tinkering of the provisions of the Tenancy Act here and there had some sort of a deleterious effect upon the people as a whole, because there was an accusation levelled that off and on this Council has attempted to amend the provisions of the Tenancy Act and therefore there can be no security and there was a feeling that what was the law today would not the law tomorrow. That committee collected evidence from various parts of the State and after recording oral evidence and examining documentary evidence and other statistics which were in the possession of the committee and which happened to be gathered during the time when Mr. Poulose's Bill was in the Selected Committee, extensively dealt with the matter and after protracted discussions, they came to certain conclusions. The main thing which the House is now concerned with in that report is the question as to whether it is not high time that a change in the method is adopted with regard to the fixation of renewal fee. Of course, there is a hoary antiquity to support the custom that in Cochin renewal fee used to be levied only on a percentage basis based on the 'Kanartham'. But it is a matter of common knowledge among the people that in Cochin there has been no fixed standard of advancing money under kanom documents. Each jenmi according to his needs was getting money from his tenants and granting favourable terms to those tenants. Some tenants were taking it to be an honour to be a kanom-holder and even though the jenmi did not at all stand in need of any advance from the tenant, he was persuaded to take some money and divest the property on kanom because a kanom tenant of a feudal lord or jenmi was always considered to be a favourite among the tenants of the jenmi. Kanom has got a peculiar history in Cochin State as well as in Malabar and it will be found as a matter of fact that the kanom amount advanced on a property bore really no relation, no exact relaction, nor any mathematical proportion to the real income of the property. But during times when this percentage used to be levied, there has been some murmurs here and there because formerly before the enactment of the first tenancy legislation in Cochin the percentag was allowed to be fixed between the landlord and the tenant by mutual consent. Some levied 15 per cent some 10 per cent and some 20 per cent and when the first Tenancy Commission Report was being made, it was brought to their notice that some jenmies even used to levy 25 per cent and even a bit more. But the first Tenancy Committee which imposed the statutory liability of the tenant to pay renewal fees, fixed the percentage at 27 per cent as a sort of solatium which would satisfy the jenmi for the fixity of tenure that was sought to be conferred on the kanam tenant, at a time when the matter was left to the contract between the landlord and tenant and the landlord had the right to evict the tenant after a period of 12 years for which there was a contract that the tenant would remain in possession of the property. Therefore for a number of years the kanom tenants used to be in the enjoyment of the property by periodical renewal fee, say for 12 years or for any other length of period in accordance with the original contract of tenancy. This gave rise to a feeling that on account of statutory liability that was cast upon the tenant by which every tenant was liable to pay this renewal fee on the percentage basis, some really lost the benefit that they had of paying only 15 per cent or 12 per cent or 10 per cent as the case may be and some others lost even the chance of benefitting by the kindness of the jenmi either by his default or by deliberate kindness even extended by the jenmi, because there was no obligation on the part of the jenmi to release anybody from the payment of renewal fee.....

Therefore it was left to the sweet option of the landlord to demand that fee on renewal. Such cases are not at all few. In olden days there were some cases where renewals were not effected at all for years together and the tenant had only occasion to pay renewal fee after a lapse of 12 or 15 years according to the rates fixed by the jenmies. There was no statutory law fixing the renewal. Therefore the tenant began to

LIBRARY ARCHIVES Kerala Legislative Assembly

agitate on the ground that this statutory fixation of the quantum of renewal fee is prejudicing his cause and therefore some sort of a change is required in the law and on the peak of that controversy several attempts have been made to reduce the percentage of renewal fee especially because certain cases came to light where large Kanam amounts were advanced against the property, according to Kanam documents, and the income from the property was not justifying payment of such large renewal fees, because the tenant had to pay renewal fee out of the income from the property he holds of Kanam The property cannot bear such large payment of renewal fee regard being had of the income from the property. That was their complaint. In one case which came before the High Court, their Lordships actually observed, that in this case the income from the property does not really allow the payment of large renewal fees at the time of renewal every 12 years; but it lies to the legislature to amend the law. Therefore even though they felt the hardship they cannot refuse to enforce the law as passed by the legislature.

Then there was another class of tenants—Nerkkanam tenants. It is a peculiar kind of tenure where as large a sum as the value of the property or something more was paid by the tenant. The landlords were very unwilling to part with their ownership in the property because by that they will be losing their status. Therefore the tenant insisted that out of the income from the property they should be allowed something towards interest for the advance he has made and then leave only a balance of half a para of paddy or one rupee to be paid as Michavaram to the jenmi as a token of ownership in the land. Now an argument was raised that in the case of such Nerkkanam tenant if you are to levy a renewal fee on a percentage basis, *i.e.*, 27½ per cent of Kanam amount or Nerkkanam amount as the case may be every 12 years that will be a great hardship. This was the complaint that was made. No reasons for fixing the amount as 27½ per cent is forthcoming on a perusal of the file regarding the Tenancy Act of 1113 which is the law of today. They so cast section 27 that in the case of such properties they probably intended that a lesser burden should fall upon the tenant. What actually induced them to make such a provision is not really clear from the file. We know the interpretation put upon that section by the learned Members of this House and by some other learned members of the public. Whatever that be when the matter was raised before the High Court they had found as a matter of fact that if such a benefit is really intended by the changed provision in section 27 tenants are not able to enjoy that benefit which is intended. In these confused days of Tenancy Law it was considered advisable by the Government to have the whole matter examined by an expert body and it was with this purpose in view that a committee was constituted. That committee was a Government committee with very strong representation of the interests of the tenants as well as landlords. There were also Government members in that committee. And after a very laborious examination of the matter the committee came to the conclusion that on principle it is not proper to base the liability to pay renewal fee on the quantum of Kanartham so long as there is no fixed principle in Cochin which is followed by the jenmies. It was therefore thought that it is not at all rational that the legislation should continue renewal fees on a percentage basis. They, therefore, adopted the principle that the payment of that liability should have some fixed relation to the income from the property. Even the Select Committee which sat with reference to Mr. T.P. Poulose's Bill came to the same conclusion. But with regard to the quantum of renewal fee that is payable there has been some difference. That Committee also came to the conclusion that the percentage basis should be given up and the renewal fee should be based upon the income of the property.

Next question which arose for very serious consideration at the last session was how shall we fix the income from a property, and how are we to find ways and means by which the interests of the landlord as well as the tenants are to be reconciled by having some sort of a compromise, in the event of the conflicting interests which prevailed even inside the committee. I may bring to the notice of the Hon'ble Members that although there was difference of opinion in the committee on that point, on most other points there was agreement among the members of the committee. It was an agreement after heated and protracted discussions, and after protracted negotiations. The committee adopted the principle therefore that it should be based upon the income of the property. As a matter of practical settlement of the vexed question the committee thought that in order to enable the landlord and the tenant to arrive at a settlement they fixed this as the basis. That is the income or fair rent of the property can be reckoned to be the Kanapattam that is fixed in the Kanam document which is lesser than the Verumpattam, because Kanam is a favourite tenure. This, they said the tenants should pay for the enjoyment of the property for the next 12 years because renewal fee is paid only after the expiry of the period. It was after elaborate consideration that the Committee came to the conslusion that they shall fix the income of the property to be the Kanapattam. Then there were wild

LIBRARY ARCHIVES Kerala Legislative Assembly

protests by the landlords who said that if as a matter of fact you are going to give away the principle of the percentage basis which has got the holy antiquity to support it because it is a very easy method of calculating the renewal fee, why should you come now and distrub that principle which has been in vogue and which is still in existence in Travancore. That was the cry raised. Now most jenmies who wanted to enforce their rights directly would have benefited by that percentage basis. In order to reconcile that difference some sort of give and take was necessary. And regard being had to the trend of thegeneral tenancy legislation, after serious consideration and in spite of the protests of the landlords representatives, the Committee took a dispassionate view and came to the conclusion that for the enjoyment of the property for the next 12 years kanapattam must be given to the jenmi as the renewal fee. Then you will find in the wording of the findings of the committee, of course the matter was not quite clear to the Government and therefore, they recommitted it to the committee for a further elucidation, and that further elucidation also was given by the Committee. Government passed orders by which they fully appreciated the stand the committee took by saying that as a matter of fact Government accepted the principle laid down by the Committee that the renewal fee should have a relation to the income of the property. But Government are not satisfied by the rough method by which the Committee proposed the settlement of this question by saying that the renewal fee may be fixed as the kanpattam fixed in the kanam document. The reason being that if you are going to relate the payment of renewal fee to the income of the property should you not be fair enough to assess the real income of the property rather than fixing the income from the proporty by a local fiction. It is a matter of common knowledge that kanam is a favourable tenure than verumpattam, and that the verumpattam is higher than the kanapattam. Thefore, the kanapattam does not represent the fair rent. The point, therefore, arose before the Government as to whether Government can be a party to the settlement of this question with this local fiction recommended to be adopted by the Committee, without prejudice to the interests of the landlord. As a matter of fact fixity has been granted to the Kanam tenants even long before in the State. Government, after mature consideration, came to the conclusion that if you are going to accept this reasonable position, then it should be based upon the fair rent of the property and not upon the kanapattam fixed in days gone by, because that cannot really represent the real income of the property, even according to the admitted case of the tenant. It is an admitted case as I said that kanapattam is lesser than verumpattam. It does not actually represent what is called the fair rent of the property. And Government considered after great anxiety and came to the conclusion that the principles of the Malabar Tenancy Act must be accepted, because Government, as I said, appreciated this great change that is proposed by the Committee—to do away with the percentage system and base it upon the income of the property.

Mr. P. Govinda Menon *(Ernakulam)*: Without interrupting, Sir, is the Hon'ble Law Member referring to the Tenancy Act of 1913, the Malabar Tenancy Act?

Mr. M. Sivarama Menon *(Advocate-General)*: Yes.

Mr. P. Govinda Menon *(Ernakulam)*: Is there the same provision in the report of the Committee presided over by Mr. Kuttikrishna Menon?

Mr. M. Sivarama Menon *(Advocate-General)*: In the Kuttikrishna Menon—Committee report, there are certain observations there. But as long as that law is undisturbed there without considering the implications of the report of the Kuttikrishna Menon Committee, let us go by known standards. That is the view that Government took. And Government passed orders to the effect that they will accept the recommendations of the Committee that percentage basis should be given up and it should be based on the income from the property. Government thought that the principle adopted in the Malabar Tenancy Act should be adopted here as well, and this Bill is the result of that order. The present Bill before you contains in the main as far as possible the principles of the Malabar Tenancy Act in the matter, except in certain principles which cannot be given effect to in Cochin on account of the peculiar conditions prevailing here. One of the changes that cannot be given effect to in Cochin is this. In Malabar, at the time they passed their Bill, there were certain kanam tenures with large kanarthams—both in South Malabar and in North Malabar. The provision relating to the payment of renewal fee was not made applicable to such kanams there by providing that where the kanartham is 60 per cent or more of Jenmy's interest on the property in South Malabar and where the kanartham is 40 per cent or more in the case of such properties in North Malabar, the provision relating to renewal fee shall not be applicable to such tenures. The result of that provision is that in the case of such kanams in Br. Malabar, they have no fixity. They are redeemable. That means kanams

LIBRARY ARCHIVES Kerala Legislative Assembly

with large kanam amounts in North Malabar and South Malabar continued to be redeemable, because they have been excepted from the purview of the section regulating the payment of renewal fee. That principle in the Malabar Tenancy Act could not be given effect to in Cochin, because irrespective of the amount of kanom, our legislature had already given fixity to kanoms as a whole. The Tenancy Act which is now in force will indicate to you that all kanoms which have been executed prior to the 8th day of Thulam 1090 and which have been in continuous possession have got fixity. Now the rights that have been already vested in the tenant cannot be divested. Therefore, without doing great injury to the interests of the tenants in the State, we cannot change that provision. Therefore, that provision in the Malabar Tenancy Act has not been accepted here.

Then there is one other aspect. As the kanoms are also brought within the ambit of the renewal provision, they continue to enjoy irredeemability after a lapse of 12 years, while they continue to be redeemable in Malabar. Under the Malabar Tenancy Act, you find there are three classes of lands—dry lands, kanom lands and wet lands. In our Tenancy Act we have ordinarily classified our lands as nilams and parambas. Now dry lands are totally exempt from the provisions of renewal fee in Malabar. We have no dry lands and therefore in casting the provision we are in the main guided by the provision of the Malabar Tenancy Act with these necessary changes.

I shall now explain to you the main principles upon which the payment of renewal fee has been fixed. I already brought to the notice of the House that there is no provision in our Tenancy Act for the fixing of the fair rent. In the Malabar Act, there is a provision for fixation of fair rent. Here it is left to the terms of the contract. In the Verumpattomdars Act, it has been laid down that in regard to verumpattom also that is invariable. Even with regard to michavaram fixed in the kanom documents, in certain documents there are provisions for the enhancement or reduction of the michavaram under certain circumstances, but still this is not in practice in the State on account of the great difficulty in proving what is the exact yield from the property. Therefore, no landlord has claimed an enhancement or the tenant claimed a reduction for damage due to fire, tempest, etc., although there are provisions in our Tenancy Act for the enhancement or reduction. So, should there not be an authority to fix the fair rent in cases where there is a dispute? Therefore, provision regarding the calculation of fair rent had to be introduced. Then, there was a point raised to this effect. Even without introducing these provisions in the Amending Bill, why not there be a settlement of all the lands in Cochin State by a Special Officer and then fix a fair rent of the property which will be followed for another 15 or 20 years. But in considering that position in its great detail it was also fully realised that such an attempt at this stage will not bear any real fruit now, because the nature of the property might have changed due to the tenant's labour; a nilam might have become a paramba by the tenant's labour and we may not be in a position at the time of the settlement to distinguish between the nature of the improvements made by the tenants and those existed in the property at the time the demise was made. Therefore, we thought that the settlement will only be a mere waste of money, because we will not be able to distingish the improvements to the property on account of the tenant's labour as distinct from the improvements effected by the jenmi before the demise was granted. Therefore, the only solace we found as reasonable was to introduce the provision of the Malabar Tenancy Act for this purpose. That Act has been in force in Malabar for a long time and it has not been possible to know that those provisions have caused any sort of vexatious litigation between the tenant and jenmi in the matter of fixing fair rent.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Have you verified that ?

Mr. M. Sivarama Menon *(Advocate-General):* Every Member of this House should be as anxious as myself. But to question the real position by interrupting to break the trend of my argument. . . . . .

Mr. Paramel Ipe Ipe *(Kunnamkulam):* On a point of information, Sir. May I know whether in the provision made for calculating the fair rent, has any consideration been given for the capital and labour spent by the tenant after the demise ?

Mr. M Sivarama Menon *(Advocate-General):* Yes, wherever a nilam is converted as a paramba by the tenant's labour.

Mr. President: Order, order. I think it will be well if the Hon'ble Members do not interrupt him at this stage.

Mr. M. Sivarama Menon *(Advocate-General):* Now, Hon'ble Members, when there is no rough and ready method chalked out by our ancestors to work out the fair rent of the property, the best method to be adopted would be the method adopted in Br. Malabar in respect of like

LIBRARY ARCHIVES Kerala Legislative Assembly

tenures. Therefore, we have tried to import as far as possible the provision of the Malabar Tenancy Act without conflicting the statutory rights which we have already conferred under the existing Tenancy Act. Those principles were as far as possible omitted in clause 3 onwards of this Bill. I shall for the enlightenment of the House further elucidate the clause. The clause reads

"For section 28 of the Act, the following shall be substituted, namely.—

"28 (1) In addition to the above amounts, the kanom tenant shall pay a renewal fee of two and one-fourth times the balance of the annual fair rent of the lands covered by the kanam after deducting

(*i*) the annual tax payable on the kanam property to Government except where it has been contracted to be paid by the landlord;

(*ii*) the annual interest on the kanam amount and puramkadam, if any; and

(*iii*) the annual michavaram payable under the kanam to be renewed."

On a mere reading of it, it may seen perplexing. Now there are certain methods by which fair rent of a property has to be arrived at. For that there are several clauses in the Bill. Then after ascertaining what the fair rent of the property is, what is it that you are to do. Deduct from that fair rent the annual tax which is payable to the Government except where it is contracted to be paid by the landlord. Then deduct from the fair rent again the annual interest on the kanam amount and puramkadam, if any, and also the annual michavaram payable under the kanam to be renewed. After deducting these three items, there will be a balance of the fair rent. Multiply the balance by 2¼ and you get the renewal fees. That proposition is simply stated there. On the whole the advantage or disadvantage of working out this proposition is centred really upon the question as to how the fair rent of a property has to be fixed. Therefore, apart from saying that that should be 2 times or 3 times or 4 times of the kanom amount, the Hon'ble Members should consider what are the principles upon which the fair rent of the property is to be fixed. Now in Chittur and other places, you find there are certain kanam documents which do not mention either michavaram and other things. From the documents it is not possible to find the rate of interest to be paid on the kanam amount. To meet such a contingency, in the Malabar Act there is a provision to calculate the rate of interest. That is proposed to be introduced here. The provison is.—

"When neither the rate of interest nor the amount of interest per annum nor the sum total of the annual tax payable on the kanam property to Government by the kanam tenant and the amount of interest per annum is specified in the kanam deed, interest shall for the purpose of sub-section (1) be calculated as follows.—

(*i*) at twelve per cent per annum when the kanam amount does not exceed one thousand rupees;

(*ii*) at nine per cent per annum subject to a minimum of one hundred and twenty rupees per annum when it exceeds one thousand rupees but does not exceed three thousand rupees:

Provided that when any usage governing kanam transactions fixes a rate of interest lower than what is provided for in this sub-section, the interest shall be calculated at such rate".

That is without prejudice to any usage, the legislature steps in and then state if the kanam document does not enable you to find out the rate of interest which has been arranged to be paid by the landlord to the tenant in consideration of the enjoyment of the kanam amount, you fix interest on these principles and then make a deduction. This provision has been on all fours incorporated into this Amending Bill.

Then, there is the explanation which is extra here, because that exists in our own Tenancy Act.

The explanation is.—

"The term 'renewal fees' in this section includes all dues such as sakshi avakasam and opputhoosi which are leviable at the time renewal by custom".

The explanation was added for the purpose of safeguarding the interests of the landlord, because at the time when the Tenancy Act responsible for the Act which is now on the Statute Book was under framing, a representation was made on behalf of some jenmies to safeguard their rights. Therefore, the explanation was there, in that Act. That explanation we have still retained in the Bill.

Then comes the main provision relating to fair rent. In the amendment Bill, it is put as 28A and 28 B.

Now we are cultivating lands.....

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. President: Does the Hon'ble Member require more time to finish his speech?

Mr. M. Sivarama Menon *(Advocate-General):* Only half-an-hour more, Sir.

Mr. President: Then, the Hon'ble Member may continue his speech on the next day alloted for Bills.

The House rose for the day at 5 p.m.

N. S. RADHAKRISHNA SARMA
Secretary to the Council

APPENDIX I

(See answer to Question No. 189)

Name of Taluk	No. of trees newly planted in 1119	No. of troes newly planted in 1120	No. of trees newly planted in 1121	Remarks
Cochin-Kanayannur ..	Nil	110	300	
Cranganur ..	Nil	Nil	40	
Mukundapuram ..	445	80	Nil	
Trichur ..	175	Nil	280	
Talappalli ..	Nil	276	Nil	
Chittur ..	Nil	Nil	Nil	
Total ..	620	466	620	

APPENDIX II

(See answer to Question No. 199)

NOTIFICATION

In exercise of the powers conferred upon them by Sections 4, 5, and 6 of the Cochin Public Canals and Backwarters Navigation Act, I of 1092, as amended up-to-date Government are pleased to issue the following Notification under Rule 95 of the Navigation Rules in so far as they relate to Navigation within Port limits.

1. All country crafts carrying passengers to and from Willingdon Island should touch only at the places that have been or may here-after be set apart for the purpose.

2. Vessels of less than 1 ton registered tonnage shall not be used for carrying passengers within the Harbour area and no vessel should carry a greater number of passengers than that noted on the vessels and in the license granted to her.

3. The license of country craft carrying passengers within the Harbour area shall always be carried in the vessel and produced whenever required to do so by canal officer of and above the rank of a Canal Lascar, by any Police officer of and above the rank of a constable and any officer of the Port detailed for the purpose of checking these vessels.

LIBRARY ARCHIVES Kerala Legislative Assembly